

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 216 of 1993

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARTABHAI VAJSURBHAI MESURIA

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI for Appellant

GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 22/12/98

ORAL JUDGEMENT

1. This is an appeal under Order 43, Rule 1 at the instance of the original plaintiff. In the suit by the plaintiff, the plaintiff had sought an ad interim injunction restraining the defendants from issuing a suspension order against the plaintiff on the ground that he was involved in a criminal offence. Such injunction was refused by the trial court on merits. The plaintiff thereupon preferred an appeal under Order 43, Rule 1,

before the District Court, wherein an application was made for interim relief in almost similar terms, pending the hearing and disposal of the said appeal. This interim application in the appeal was also heard and rejected by the lower appellate court on merits. Hence the present appeal.

2. The plaintiff had filed a suit admittedly on an apprehension, and before the issuance of his suspension order, apprehending or assuming that because he is named as a co-accused in an FIR, wherein he is alleged to have demanded and accepted illegal gratification as a public servant in the course of his duty, he is likely to be suspended. It is now stated before me that the said FIR has resulted in a criminal case wherein a chargesheet has been filed where the plaintiff-appellant is also a co-accused.

3. It must be clearly kept in mind that it is not the plaintiff's case that he could not be suspended pending a departmental inquiry. The plaintiff has confined the averments made in the suit as also the reliefs in the suit, pertaining to a possible suspension order being issued against him, only on the basis that he is involved in a criminal case.

4. It is also an admitted position and conceded before me that a government servant such as the plaintiff, who is governed by the Bombay Civil Services Rules, 1959, can be suspended on the basis that he is involved in a criminal offence. Thus, the trial court as also the lower appellate court were justified in coming to the ultimate conclusion that the power of the government as an employer under the statutory rules empowers such employer to suspend the employees such as the plaintiff, in case it is found that he is involved in a criminal offence. This power of suspension is not merely contractual in nature, but is also statutory inasmuch as, as is well settled by law, that the Bombay Civil Services Rule, 1959 constitute statutory terms and conditions of service.

5. It is stated before me (although the same is strictly speaking not on the record of the court) that the said FIR on the basis of which the suit was filed has resulted in a chargesheet being filed in an appropriate court, and that in the resultant criminal case the appellant-plaintiff is a co-accused, and that the offences in respect of which the appellant-plaintiff is charged are offences under the Prevention of Corruption Act.

6. It was sought to be contended by the learned counsel for the appellant that the courts below have failed to take into consideration the strong and emphatic assertion of the appellant-plaintiff that he is innocent of the criminal allegations made against him and that he could not possibly have committed the offences which are prima facie disclosed in the FIR, inasmuch as he was at some other place on the relevant day. Obviously the plea of alibi sought to be set up by the appellant plaintiff has relevance only in the context of the possible defence to the criminal charges. The possibility of innocence of the plaintiff has no nexus with the statutory power which is available to the government as an employer of the plaintiff. It is conceded that it is not as though the government employee can be suspended under the relevant rules only if the government is satisfied that the employee is guilty or even prima facie guilty of the criminal charges levelled against him. Obviously such is neither the contention nor could it be the intention of the Legislature. The statutory power in question can be exercised by the Government as an employer simply on the existence of the fact that the employee is involved in a criminal incident. The actual fact that the plaintiff is involved in a criminal incident is admitted inasmuch as the FIR had been filed against the plaintiff on the date of the suit, which has subsequently resulted in the filing of a chargesheet and a criminal case which is today pending.

7. In the premises aforesaid, there is not the slightest doubt that if and when the government and/or the appropriate authority decides to issue a suspension order, such an order would be in the exercise of the power of the Government under the statutory rules. It is, therefore, not open to the plaintiff to challenge the power, or the suspension, simply on the ground that he is innocent of the acts alleged against him.

8. In any event, it is an admitted position that till today the Government has not issued a suspension order, neither has the government initiated any departmental inquiry. It is, therefore, obvious that even on the facts of the case, the Government has not chosen to issue a suspension order. That, however, does not mean that the Government does not have the power to do so, neither does it mean that in case such power is to be exercised, it can only be exercised if the Government is prima facie satisfied that the plaintiff is guilty of the acts and actions alleged against him in the FIR and/or the chargesheet.

9. In the premises aforesaid, the lower court was eminently justified in refusing to grant any injunction as sought for by the appellant.

10. This appeal is, therefore, required to be dismissed and is accordingly dismissed with no order as to costs.

11. At this stage learned counsel for the appellant requests that if and when a suspension order is passed by the Government on the basis of the FIR and/or the chargesheet, the same may not be implemented for a period of ten days, in order to enable the present appellant to take appropriate remedial measures. I cannot overlook the fact that I am dealing with an appeal under Order 43, Rule 1 and the powers of this court are limited to examining the impugned order on merits. In this context this court does not have the discretionary and/or wider equitable jurisdiction which it would perhaps be able to exercise in a writ petition under Article 226 of the Constitution of India. I am, therefore, unable to grant the request, particularly since it amounts to a stay in respect of future action which may be taken by the government as the employer. This request is, therefore, rejected.

13. The Registry is directed to send Yadi to the trial court forthwith i.e. not later than 30th December 1998. Direct service is also permitted.
